

Personnel Monthly

State Personnel Department

The Process of a Dismissal Appeal

The Merit System Act provides that a classified employee who is dismissed from employment may appeal to the State Personnel Board. An employee who wishes to appeal his or her dismissal must file with the appointing authority and the Board a notice of the appeal within 10 working days after the notice of discharge. The appeal may be hand delivered to the Personnel Department, mailed to the Board at the address for the Personnel Department, or faxed to the Administrative Hearings Division at 334-353-9901. Employees who appeal are required to admit or deny the charges made the basis for the dismissal. Employees may have an attorney represent them in the appeal; however, employees who are *pro se* (who represent him or herself), have the same rights and protections as persons who have legal representation.

Upon receipt of an employee's notice of appeal and answer to the charges, the case is assigned to an Administrative Law Judge (ALJ), who will hear the appeal and make a recommendation to the Board. The Board employs two merit-system employees who serve as ALJs. These ALJs are attorneys with expertise in federal and state employment law, as well as the State Merit System. Shortly after the notice of appeal is filed, the ALJ holds a status conference with all parties and explains the pre-hearing procedure and the hearing process. At the status conference, the ALJ also sets the date for the dismissal

hearing, based on the schedules of the parties involved in the matter. The ALJ then issues a scheduling order that explains the hearing procedure as well as establishes deadlines for filing pre-hearing materials.

The hearing follows the same procedure as in a non-jury civil case in court. The agency bears the burden of proof to show the charges or reasons for the termination are supported by the preponderance of the evidence. The dismissal appeal hearing before the ALJ is a hearing *de novo*, which means that the ALJ will examine the evidence with a new look at the facts and is not bound by any factual findings made by the agency. Practically speaking, the agency must show that the events resulting in the dismissal did in fact occur, that the agency followed its rules, regulations and all applicable law and that it acted within its statutory authority. Upon meeting that burden of proof, the burden shifts to the employee to prove the dismissal was not warranted or the dismissal should not be upheld for some other reason, such as the agency in fact failed to follow its rules or regulations, some unlawful motive exists or mitigating circumstances require a lesser punishment.

Before the hearing, the parties are permitted to engage in what is referred to as "discovery." Discovery is the opportunity for



the parties to request certain documents and evidence. Under certain circumstances, witness depositions may also be taken. Also, prior to

the hearing, the parties must exchange the exhibits (evidence) that they intend to introduce at the hearing. Steps are taken to preserve the privacy interests of all parties and witnesses to the issues at hand, and privileged/confidential information that must be revealed may be placed under seal by the ALJ, meaning that it can be viewed only by court order or with the consent of all parties. In addition to exchanging exhibits before the hearing, the parties must provide the ALJ, and each other, their lists of witnesses they plan to have testify at the hearing.

The location and time of the hearing will be provided in the scheduling order. Present at the hearing will be the ALJ, the employee, the employee's attorney (if applicable), the agency's attorney, witnesses, and a court reporter. The court reporter will record the proceedings of that hearing and will swear in each witness who testifies. At the hearing both parties will have the opportunity to present their side of the case. Because the agency has the burden to prove the dismissal was warranted, the

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January/February 2008

Special points of interest:

- The Process of a Dismissal Appeal.
- Ask Sharon: Understanding Progressive Discipline.
- February and March Training Schedules.
- Personnel Pushes Legislation Protecting Merit System Employment!

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Ask Sharon Massey: Understanding Progressive Discipline

In keeping with this month's focus on employee's rights, Sharon answers some frequently asked questions regarding progressive discipline:

Q: "My supervisor has given me a written reprimand, and I disagree with it. Can I write a rebuttal?"

A: "Yes, you may write a rebuttal and request that it be attached to the written reprimand and placed in your personnel file. Check with your supervisor or agency policies about any deadline by which you have to submit your rebuttal."

Q: "My supervisor told me to sign the written reprimand. Do I have to sign it even if I do not agree with what is written in it?"



A: "Yes. Failure to sign the written reprimand could result in further disciplinary

action or actions for insubordination, up to, and including, termination. Remember that signing the written reprimand does not denote agreement. Instead, your signature merely indicates that you were made aware of the reprimand and received a copy."

Q: "My supervisor has also given me a Corrective Action Plan. What is a Corrective Action Plan, and do I have to

follow it?"

A: "A Corrective Action Plan is used when an employee's performance is not up to acceptable standards and adjustments are necessary for the employee's successful performance of his or her job. The plan will assist you by providing an orderly, precise, and practical plan to overcome the weakness area or areas identified by your supervisor. By developing this plan, your supervisor is communicating to you the importance of the situation and reminding you of your work expectations. If you do not follow the plan, not only could your work performance continue to suffer, but you may experience additional discipline."

Personnel Training Schedule—February and March 2008

The following seminars are being offered in February and March. All training offered by Personnel is free to the employee and the agency. For more information visit the Personnel website at www.personnel.state.al.us. To register for a class, please see your agency's training coordinator. We look forward to seeing you in class!

February 6: Performance Appraisal for Su-

pervisors—Montgomery

February 7: Progressive Discipline—Montgomery

February 13: Employment Law for Supervisors—Montgomery

February 21: Customer Service —Montgomery

February 26-27 and March 4-5: Train the Trainer: The Basics—Montgomery



March 12-13: Dynamics of Supervision—Montgomery

March 20: Sexual Harassment Prevention—Montgomery

March 26: Family and Medical Leave Act—Birmingham

The Process of a Dismissal Appeal, Cont'd.

agency will present its evidence first. The employee then has the chance to present his or her side of the story. Witnesses may be cross-examined by opposing parties, or their attorneys, and exhibits may be introduced.

After the hearing, the ALJ will review the evidence presented and prepare a written recommendation to the Board for its consideration. The ALJ may recommend that the dismissal of the employee be up-

held, recommend a different type of action, such as suspension or demotion, based upon mitigating factors, or that the employee be reinstated with or without back pay. The ALJ makes a recommendation to the Board for its consideration and sends a copy of the recommendations to all parties.

The parties involved have 5 working days after the date of receipt of the recommendation to file written exceptions and

to request oral argument. "Written exceptions" must specify those portions of the ALJ's recommendation with which the party disagrees. These exceptions are also sent to the Board for its review prior to the oral argument.

"Oral arguments" are conducted during the legal portion of a regularly scheduled monthly Board meeting. Each party is

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The Process of a Dismissal Appeal, Cont'd.

permitted to address the Board. Because the State agency bears the burden of proof, the agency has the first opportunity to argue, followed by the employee or the employee's attorney. The agency may rebut the employee's arguments. The Board encourages parties to be direct in their oral arguments and to focus the Board's attention on the facts the parties deem to be most important. During this time, Board members may ask questions and request clarification regarding the evidence in the record. No additional evidence or material that was not part of the ALJ's record is permitted to be submitted during oral arguments.

After the oral arguments are complete, the Board may vote to go into "executive session" to discuss the dismissal appeal. Alabama's Open Meetings Act permits the Board to go into an executive, or closed, session to consider the discipline or dismissal of public employees, to discuss the evidence or testimony presented during a public hearing, and to discuss the general reputation and character of an individual. Discussions that occur in executive session

are confidential.

When the Board reconvenes from executive session, the Board will vote on the appeal. A majority vote of the Board members present is required to take any action, and the Board can modify, alter, set aside, or affirm the ALJ's recommendation. The Board can uphold the appointing authority's decision to dismiss the employee or can reinstate the dismissed employee and can order conditions for that reinstatement, such as the employee undergoing specialized training or being placed on probationary status.

The Board also has the authority to reinstate a dismissed employee with back pay and benefits for the time between the date of termination and the date of the Board's decision to reinstate. Similarly, the Board can vote not to award a reinstated employee back wages and benefits or can order the back pay to be offset by the employee's interim earnings if the employee had found other employment.

After the Board votes, it issues a

written, signed order outlining its decision. That decision is forwarded to the parties who have the opportunity to file an application for rehearing with the Board within 30 days of the Board's order. Both parties also have the option of appealing the Board's order to the circuit court.

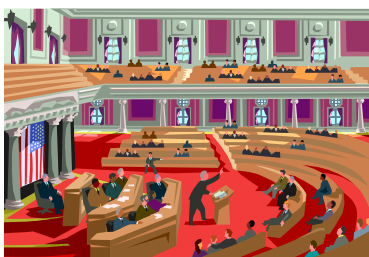
The State of Alabama has over 30,000 employees in the classified service who are subject to the Rules of the State Personnel Board. Given this size workforce, very few employees are dismissed. It is the hope of the State Personnel Department and Board that corrective action, training, and positive discipline can prevent the need for a dismissal. However, in some instances, a dismissal is the appropriate course of action by an appointing authority. At such time, it is the responsibility of State Personnel to ensure that due process was followed for the employee and, when appealed by the dismissed employee, it is the responsibility of the State Personnel Board to ensure that the dismissal was carried out legally and supported by the evidence.

Personnel Pushes Legislation Protecting Merit System Employment!

The State Personnel Department supports a bill designed to help protect Merit System employees in the event of layoffs. The bill, House Bill 269, was introduced in the House of Representatives on February 5, the first day of the 2008 Regular Legislative Session.

Under current law, an appointing authority may layoff a classified employee whenever it deems the layoff necessary by reason of shortage of work or funds, the abolition of a position, or other material change in duties or organization.

The bill that State Personnel supports provides that in the event of a layoff, a contract employee must be laid off before a Merit System employee, if the Merit System



similar jobs.

House Bill 269 also provides that a Merit System position may not be filled with a contract or non-merit employee until all Merit System employees who have been laid off from a substantially similar position have been offered the vacant position. The State Personnel Department approached Representative Mike Hill about the bill and he was

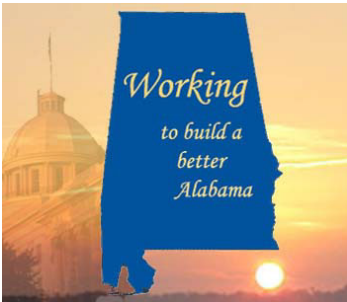
employee and the contract employee are performing substantially

generous enough to sponsor it. We are very grateful to him for taking on this task! There are also four co-sponsors on the bill, Representatives Ward, Clouse, McCutcheon, and Gipson. We truly appreciate their support of the Merit System. If you would like to check the progress of this bill, or any other bill of interest to state employees, you can visit the Alabama Legislative Information System Online (ALISON) at <http://alisdb.legislature.state.al.us/acas/alisonstart.asp>. Simply follow the links to ALISON and search for bills that apply to state employees or to specific departments. If you have specific questions regarding the progress of a bill, you may email them to newsletter@personnel.state.al.us.

State Personnel Department

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The Alabama Merit System law created the Personnel Department to be administered by a Personnel Director who answers to an independent board. The Board currently consists of five members who serve staggered six-year terms. Two members are appointed by the Governor, one by the Lieutenant Governor, one by the Speaker of the House, and one member is an elected classified state employee who is subject to all merit system rules and regulations.

By law the Board is required to meet once each month. Its principal functions are to:

- *adopt and amend rules and regulations;
- *adopt and modify classification and pay plans;
- *hear the appeals of employees who have been dismissed;
- *represent the taxpayers' interest in the improvement of personnel management in the state; and
- *advise and assist the Personnel Director.

The Personnel Department is divided into 9 major areas: Classification and Pay; Examination; Certification; Payroll and Personnel Audit; Information Technology; Training; Legal; Administrative Hearings; and Special Projects. Please remember, the Personnel Department is here to protect the merit system, and to serve as a resource for State employees and the citizens of Alabama!

The Personnel Board is scheduled to meet on February 20 and March 19 at 10:00 am in the Board Room on the 3rd Floor of the Folsom Administrative Building in Montgomery. The meetings are open to the public.

Donated Leave Requests



To assist those who have qualified for catastrophic sick leave, State Personnel is listing the names of those state employees who are in need of donated leave. The following individuals need your help:

- ▶ Pamela Adkins with Ag & Industries;
- ▶ Gayle Allen with Human Resources;
- ▶ Randal Baxley with Transportation;
- ▶ Tamala Beck with Human Resources;
- ▶ Cassandra Belyeu with Tourism & Travel;
- ▶ Virginia Brooks with Public Safety;
- ▶ Randell Burroughs with Transportation;
- ▶ Shanna Collier with Public Health;
- ▶ Jannie Dudley with Mental Health;
- ▶ Quinton Elliot with Transportation;
- ▶ James Farris with Revenue;
- ▶ Mary Flowers with Human Resources;
- ▶ Trasheka Freemon-Wils with Human Resources;
- ▶ Clara Frost with Mental Health;
- ▶ Jacqueline Gaines with Human Resources;
- ▶ Mary Joan Greene with Public Health;
- ▶ Gloria Higgins with Human Resources;
- ▶ Alma Jean Johnson with Rehabilitation Services;
- ▶ Angela Johnson with Corrections;
- ▶ O D Jones with Mental Health;
- ▶ Sheila Lane with Human Resources;
- ▶ Sandra Mann with Ag & Industries;
- ▶ Joe Marshall with Youth Services;
- ▶ Tyson Moon with Transportation;
- ▶ Erica Moulds with Education;
- ▶ Angela Myrant with Mental Health;
- ▶ Les Nicholson with Revenue;
- ▶ Oliva Richardson with Revenue;
- ▶ Arthur Russell, Jr. with Transportation;
- ▶ Bonnie Russell with Transportation; and
- ▶ Pheechea Southern with Industrial Relations.

For more information on how to donate leave to one of these individuals, please visit the State Personnel Department website at www.personnel.state.al.us. To donate your leave to a qualified employee, please visit your personnel manager and request a Form 25A or [download](#) it from the State Personnel website.